

Performance Agreement.

_____ (Name)

_____ (Address)

_____ (City and Zip Code)

I, _____ as _____ do hereby agree that if the proposed plat _____ (number and name) _____, filed by me is approved by the Planning Commission of the City of San Antonio, Texas, the Director of Development Services of the City may retain the plat in his possession without recording same for a maximum period of three (3) years from the date of plat approval, by which time I will have completed all site improvements and same will have been accepted by the City of San Antonio and County if Applicable, or until I have filed with the Finance Department for the City of San Antonio one (1) of the following forms guaranteeing that all such improvements will be constructed within three (3) years of the date of plat approval and shall be payable to the City of San Antonio. The form of the guarantee of performance shall be as follows:

(1) A performance bond, meeting the requirements set out in Chapter 35 of the City Code, and which will be substantially in the form set out in Exhibit B of Chapter 35, in an amount equal to the cost estimate, as approved by the Director of Development Services, of the uncompleted and unaccepted site improvements.

(2) A trust agreement, meeting the requirements set out in Chapter 35 of the City Code and which will be substantially in the form set out in Appendix B to Chapter 35, in an amount equal to the cost estimate, as approved by the Director of Development Services, of the uncompleted and unaccepted site improvements.

(3) Cash or cashier's check in the full amount of the uncompleted and unaccepted site improvements deposited with the Director of Development Services.

(4) An irrevocable standby letter of credit drawable in the State of Texas on a federally insured commercial bank and meeting the requirements set forth in Chapter 35 of the City Code and which will be substantially in the form set out in Appendix B to Chapter 35, in an amount equal to the cost estimate, as approved by the Director of Development Services, of the uncompleted and unaccepted site improvements. The irrevocable letter of credit shall not expire prior to three years from the date of plat approval.

In any event, I fully understand and agree that, in addition to the requirement for a performance bond, trust agreement, irrevocable standby letter of credit, and/or cash or cashier's check deposit to guarantee completion and acceptance of the site improvements before the plat is recorded, as hereinbefore stated, I, the undersigned subdivider and my heirs, or assigns, successors, or subsequent purchasers having any right, title or interest in the property described as _____ or any part thereof, shall be liable to the City of San Antonio that all site improvements will be completed and, except for planned residential district bufferyards and public benefit features, accepted by the City within the time provided herein. However, should the completion of such site improvements be delayed by reason of strikes, riots, acts of God, acts of the public enemy, injunction or other court action, or any other cause similar to those enumerated beyond my control, I shall be entitled to an

extension of time equal to the time of such delay, which extension of time is to be fixed finally by written certificate made by the Director of Development Services. It is expressly declared that no such allowance of time will be made unless claimed by me and allowed and certified in writing by the Director of Development Services at the end of each period of such delay.

I further fully understand and agree that, periodically until the expiration of three (3) years from the date of plat approval, the Director of Development Services shall review the cost estimate to complete the uncompleted site improvements outstanding at that date to determine the adequacy of any performance guarantee. Should the Director of Development Services conclude that the sum set out in such performance guarantee is inadequate to provide for the completion of the uncompleted site improvements, he shall require either a substitute or an additional guarantee to cover the newly estimated cost.

Should such necessary additional or substitute guarantee fail to be provided to the Director of Development Services within thirty (30) days of the request for same, I understand and agree that the Director of Public Works shall refuse to accept a performance guarantee under any form which is related to the plat of a subdivision in which I have a principal or subsidiary interest. Such a plat once it has been approved by the Planning Commission may be recorded only in the manner prescribed in Chapter 35 of the City Code.

In addition, I further fully understand and agree that, if after the expiration of the time periods referred to herein, the site improvements have not been satisfactorily completed and accepted, the Director of Development Services shall refuse to accept a performance guarantee, under any form, which is related to a plat in which I have an interest.

In any event, I agree that approval of the plat shall expire after three (3) years from date of approval unless I have either had all site improvements accepted by the City and recorded the plat, or requested a time extension for plat recordation and provided an approved performance guarantee.

Executed this _____ day of _____, _____.

_____ Subdivider

By: _____

Title: _____

Performance Bond.

State of Texas §

§

Known all men by these presents:

County of Bexar §

Performance Bond

Subdivider:	
Surety:	
Surety's Texas Address for Demand:	
Surety's Phone Number	
Bond Amount:	
Subdivision Plat (No. and Name):	
Date of Planning Commission Approval:	
Site Improvements:	

This Performance Bond is given to the City of San Antonio in satisfaction of the guarantee of performance requirements of Article 4 of the Unified Development Code of the City of San Antonio. The rights and obligations of Subdivider, Surety, and the City of San Antonio are governed by the terms and conditions set forth on **Exhibit A**, which is incorporated into this bond for all purposes as if fully set forth.

In Witness Whereof, the parties have caused their representatives to set their hands.

/Subdivider Name/, a Texas corporation

/Surety Name/, a Texas corporation

By: _____

By: _____

Printed
Name: _____

Printed
Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Attorney-in-fact

Approved and accepted this _____ day of _____, _____.

City of San Antonio,
a Texas municipal corporation

By: _____

Printed Name: _____

Title: _____

Date: _____

City Attorney's Office

(ATTACHMENT: Power of Attorney)

Exhibit A: Performance Bond Terms and Conditions

Whereas, the Subdivider petitioned the Planning Commission of the City of San Antonio for permission to develop a subdivision within the jurisdiction of the City;

Whereas, the Subdivision Plat, which shows the subdivision, was approved by the Planning Commission on the Date of Planning Commission Approval;

Whereas, the City's Unified Development Code ("UDC") requires that the site improvements ("Site Improvements") set out below be completed by Subdivider in conformance with the UDC within three years from the Date of Planning Commission Approval;

Whereas, the UDC requires that an approved subdivision plat may not be filed for record in the office of the county clerk until such Site Improvements have been completed and have been accepted by the City of San Antonio, or until there is provided to the City of San Antonio a guarantee of performance that such Site Improvements will have been completed and will have been accepted by the city within three years of the date on which the plat was approved; and

Whereas, the Subdivider has elected to provide to the City of San Antonio such a guarantee of performance in lieu of waiting to record the Subdivision Plat until all Site Improvements have been completed.

Now therefore, the Subdivider, as principal, and Surety, as surety, jointly and severally guarantee to the City of San Antonio, a municipal corporation of the County of Bexar and State of Texas ("City"), full payment of the Bond Amount if the required Site Improvements are not completed and accepted by City within three years of the Date of Planning Commission Approval or such extended deadline for performance as Subdivider may obtain in conformity with the UDC. Subdivider and Surety bind themselves and their respective heirs, administrators, executors, and assigns, jointly and severally, firmly to this bond.

If the Site Improvements are not timely completed, the City of San Antonio need only make written demand on the Surety at the Surety's Address for Demand for City's estimate of the cost of completing the Site Improvements. The Demand cannot exceed the Bond Amount. If the City demands less than the full Bond Amount but is unable to complete the Site Improvements, it may make multiple draws until the Site Improvements are completed or until it has drawn the full Bond Amount. If upon completion of the Site Improvements City still has unspent Surety funds, City must refund the unspent funds to Surety.

Changes in the nature or extent of Site Improvements do not impair Surety's obligations, but nothing increases the Bond Amount without Surety's written consent.

If, within three years of the Date of Planning Commission Approval or such extended deadline for performance as Subdivider may obtain in conformity with the UDC, Subdivider constructs or causes to be constructed the Site Improvements according to the requirements of the UDC, then this obligation terminates. Otherwise the obligation under this bond remains in full force and effect.

Trust Agreement.

City of San Antonio Trust Agreement Securing Subdivider's Performance of Development-Related Obligations.

This Trust Agreement is entered into among Subdivider, Trustee, and City as of the effective date stated below.

Subdivider:

Subdivider's Address:

**Trustee Name and Texas
Address:** Trust Institution as
defined by the Texas Finance
Code, Title 3. *Financial
Institutions and Businesses,
Subtitle F*

Trustee's Phone Number:

City: City of San Antonio

City's Address: P.O. Box 839966, San Antonio, Texas 78283-3966
(Attention: Director, Development Services)

Trust Amount:

Subdivision Name:

Plat No.:

County:

1. This is a Trust Agreement Securing Subdivider's Performance of Development-Related Obligations under the Unified Development Code of the City of San Antonio, Texas ("UDC"). The Terms and Conditions of Subdivider Trust Agreements ("Terms and Conditions") contained in the UDC are incorporated into this Agreement for all purposes as if fully set forth. A copy of the Terms and Conditions are attached for convenience, but in case of a conflict, the text of the UDC controls. If the terms and conditions contained in the UDC change during the pendency of this trust, the terms and conditions in effect at the beginning of this trust continue to govern it unless all parties agree otherwise in writing.

2. Subdivider and Trustee each acknowledge receipt of the Terms and Conditions of Subdivider Trust Agreements contained in the UDC.

3. Subdivider has delivered to Trustee the Trust Amount in immediately available funds and U.S. currency. Trustee acknowledges receipt of the Trust Amount in immediately available funds and U.S. currency and accepts the obligations of this Trust as set out in the Terms and Conditions of Subdivider Trust Agreements contained in the UDC.

In Witness Whereof, the parties have caused their representatives to set their hands to be effective as of the following effective date:

Effective Date: _____

City of San Antonio,
a Texas municipal corporation

/Subdivider/,

By: _____

By: _____

Printed
Name: _____

Printed
Name: _____

Title: _____

Title: _____

Approved As To Form:

City Attorney's Office

/Trustee/,
a "Trust Institution" as defined by the Texas Finance Code, Title 3. *Financial Institutions and Businesses, Subtitle F*

By: _____

Printed
Name: _____

Title: _____

Terms and Conditions of Subdivider Trust Agreements

1. Scope of Terms and Conditions.

These terms and conditions govern all Trust Agreements Securing Subdivider's Performance of Development-Related Obligations that are entered into under the Unified Development Code of the City of San Antonio, Texas.

2. Subdivider Undertaking.

Subdivider pledges to City to fulfill its infrastructure-related obligations arising from the Subdivision independently of this Trust. This Trust is merely intended to secure Subdivider's obligations, not replace or satisfy them.

3. Trust, Withdrawals.

Trustee must hold the Trust Amount in trust for City to secure Subdivider's infrastructure-related obligations arising from the Subdivision. All withdrawals must be approved by the Director of Development Services, and may be withdrawn as follows:

By Subdivider:

Subdivider may withdraw from the Trust Amount when 50% or more of the remaining cost estimate has been completed and approved in writing by the Director of Development Services. The Director of Development Services shall not approve any withdrawal until subdivider delivers an engineer's certification, from a licensed engineer in the state of Texas, attesting to the accuracy of the dollar amounts of the construction cost of the remaining improvements. Subdivider may not withdraw more than four times (not to include a one time substitution approved by the director of development services upon the granting of a time extension) during the life of the trust. In no event shall the amount of the trust be less than twenty (20) percent of the total amount of the original cost estimate until all improvements have been completed and approved.

To make a withdrawal, Subdivider must deliver to Trustee a Draw Request Form signed by the Subdivider and Director of Development Services acknowledging completion of some or all of Subdivider's infrastructure-related obligations. Draw Request Forms shall be substantially in the same form as Form V in Appendix B of the Unified Development Code. Developer's and City's acknowledgment must state the dollar value of the completed infrastructure-related obligations.

By City:

City may withdraw from the Trust Amount to complete Subdivider's infrastructure-related obligations if Subdivider has failed to timely fulfill those

obligations. Trustee must honor any attempted draw by the City if the draw is in writing and represents to the Trustee that Developer has failed or refused, or anticipatorily breached its obligation, to timely complete its infrastructure-related obligations arising from the Subdivision. City may withdraw as much as is reasonably necessary to fulfill Subdivider's infrastructure-related obligations arising from the Subdivision. City may make multiple draws. Draw Request Forms shall be substantially in the same form as Form W in Appendix B of the Unified Development Code.

4. Accounting by City.

If City withdraws any part of the Trust Amount, within 60 days of completing Subdivider's infrastructure-related obligations arising from the Subdivision, City must deliver to Subdivider an accounting of the money spent. Subdivider acknowledges that the statutory formalities applicable to contracting by City may make the City's cost of completion higher than that Subdivider would have incurred had it completed the work itself.

5. Federal Deposit Insurance.

Trustee must keep the Trust Amount in an interest-bearing account or accounts at federally-insured commercial bank or banks. Trustee must spread the Trust Amount over as many different institutions as necessary to assure the entire Trust Amount is covered by federal deposit insurance.

6. Termination of Trust.

This Trust Agreement terminates only when the City delivers a written release of trust to Trustee, with a copy to Subdivider. City has 45 days after engineering certification, including seal, of completion of Subdivider's infrastructure-related obligations arising from the Subdivision in which to deliver a written release of the trust. If City fails to do so timely, Subdivider may sue for a release of the trust.

7. Interpleader.

If Trustee is joined as a party to a lawsuit arising out of this Trust, Trustee may interplead the funds remaining in Trust with any court of competent jurisdiction in Bexar County, Texas. Upon so doing, Trustee is absolved of liability both to City and to Subdivider for all sums interpleaded and for all sums previously paid to City under this Agreement. Upon depositing the funds into the court registry pursuant to an interpleader, Trustee is entitled to recover from the sums deposited its reasonable and necessary attorneys fees actually incurred in making the interpleader.

8. Integration.

Subdivider may contract separately with Trustee regarding all aspects of this trust relationship not covered by this agreement, including Trustee's fees and any indemnity Trustee may wish to be provided, but not such agreements may contradict this Agreement or impair the city's rights under it. This Agreement is a fully integrated statement of City's rights as to Trustee and Subdivider. There are no oral or other written agreements

to which City is a party governing the terms of this trust. Without limiting the generality of the above, City need not pay any fee to Trustee, and City cannot lawfully, and will not, indemnify Trustee in any respect.

9. Public Information.

All parties acknowledge that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public. Nothing in this agreement waives an otherwise applicable exception to disclosure.

10. Prohibited Interests in Contracts.

10.01. The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

- (i) a City officer or employee;
- (ii) his parent, child or spouse;
- (iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;
- (iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

10.02. Subdivider and Trustee each warrant and certify as follows:

- (i) They and their respective officers, employees and agents are neither officers nor employees of the City.
- (ii) They have tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

10.03. Subdivider and Trustee acknowledge that City's reliance on the above warranties and certifications is reasonable.

Trust Agreement Draw Request Form (Subdivider)

Draw Request Form (Subdivider)

Date:

Plat No.:

Subdivider's Name:

Address:

Phone Number:

Trustees' Name:

Address:

Phone Number:

Escrow Total (Start of Trust): _____ 20% Reserve Amount: _____

Escrow Total (Current): _____ Total Request for this Draw: _____

Construction Item	Previous Draw Totals/Amounts	Request for this Draw

I hereby certify that all the information stated herein is true and accurate, and is based on construction costs bearing the signature and seal of a licensed engineer in the state of Texas (*original cost estimate and cost estimate for remaining work attached*). This draw request is submitted for reimbursement of funds. All

completed work has been done in accordance with the standards and procedures outlined in the City of San Antonio Unified Development Code. I understand that I cannot obtain additional monies from the trust escrow account without the approval of the Director of Development Services, and that approval of any work completed does not constitute acceptance of any improvements. I also understand that a 20% reserve based on the original certified estimate will not be released until all work is complete and approved by the Director of Development Services (and County Engineer if located in the Extra Territorial Jurisdiction).

Subdivider's Signature

Print Name:

Title:

Date:

State of Texas X

X

County of Bexar X

Before me, a notary public for the State of Texas, personally appeared _____, known to me to be the person whose name is subscribed to the foregoing document and, being by me first duly sworn, declared that the statements therein contained are true and correct on this the _____ day of _____, 20__.

Notary Public, State of Texas

My Commission expires: _____

The property that is the subject of this trust escrow account was inspected on _____ (date).
The draw amount is acceptable and approved.

City of San Antonio Signature

Date

Print Name:

Title:

Draw Request Form (City)

Draw Request Form (City)

Date:

Plat No.:

Subdivider's Name:

Address:

Phone Number:

Trustees' Name:

Escrow Total (Start of Trust): _____ 20% Reserve Amount: _____

Escrow Total (Current): _____

Total Request for this Draw: _____

Construction Items to be completed:	Request for this Draw

This draw request is submitted to Trustee for release of funds associated with the plat number indicated above. The subdivider named above has failed, refused, or anticipatorily breached its obligation to timely complete its infrastructure related obligations arising from the subdivision of the plat identified above.

City of San Antonio Signature

Date

Print Name:

Title:

Irrevocable Letter of Credit.

IRREVOCABLE STANDBY LETTER OF CREDIT

No. _____

Date: _____

Expiration Date: _____

Beneficiary:

City of San Antonio
City Hall
P.O. Box 839966
San Antonio, TX 78283-3966

Applicant:

Applicant Name
Applicant Address
City, State, Zip, Country

To City of San Antonio:

We hereby issue our Irrevocable Standby Letter of Credit No. _____ in your favor up to the aggregate amount of US\$_____,_____ (_____ and ____/100 U.S. Dollars) ("Stated Amount") available by draft(s) drawn on us at sight, marked "Drawn under Irrevocable Standby Letter of Credit No. _____ of _____ (*Bank Name*) _____, San Antonio, Texas" accompanied by the following:

Beneficiary's written statement purportedly signed by its City Manager, the Director of Development Services, or their authorized representative reading as follows: "The undersigned is an authorized representative of the City of San Antonio (hereinafter "Beneficiary") and has the authority to make the following statement: Beneficiary hereby certifies that the funds drawn under this letter of credit are drawn in accordance with City of San Antonio Unified Development Code and associated provisions regarding performance guarantees of site improvements."

Partial Drawings are permitted however the aggregate amount of all drawings may not exceed the Stated Amount.

This Letter of Credit sets forth in full the terms of our undertaking and such undertaking shall not in any way be modified, amended or amplified by reference to any document, instrument or agreement referred to herein or to which this letter of credit relates unless agreed to in writing by (*Bank Name*) and the City of San Antonio.

Except as expressly stated herein, this undertaking is not subject to any agreement, condition or qualification. The obligation of (*Bank Name*) under this Irrevocable Letter of Credit is the individual obligation of (*Bank Name*), and is in no way contingent upon reimbursement by applicant with respect thereto.

We hereby engage with you that documents drawn under and in compliance with the terms of this Irrevocable Standby Letter of Credit will be duly honored if presented for payment to *(Bank Name)*, *(Physical Address of Bank)* on or before the expiration date of this Letter of Credit.

This Letter of Credit is subject to the International Standby Practices 1998, International Chamber of Commerce Publication No. 590 ("ISP98"), and as to matters not addressed by ISP98 is subject to and governed by Texas State Law and applicable U.S. Federal Law.

(Bank Name)

(Authorized bank signature)

Print: _____

Title: _____

Attest:

By: _____

Print: _____

Title: _____

Approved as to form: _____
City Attorney's Office

Warranty Bond

WARRANTY BOND

STATE OF TEXAS §
COUNTY OF BEXAR §

KNOW ALL MEN BY THESE PRESENTS:

THAT _____, as Principal, and _____, a corporation organized under the laws of _____, as Surety, do hereby expressly acknowledge themselves to be held and firmly bound to pay unto the City of San Antonio, a municipal corporation of the County of Bexar and the State of Texas, the sum of _____ dollars (\$ _____), for the payment of which sum will truly be made unto said City of San Antonio, and its successors, and said Principal and Surety do hereby bind themselves, their heirs, administrators, executors, assigns and successors jointly and severally firmly by these presents.

Principal has agreed to build and construct (name/number of plat), and the associated improvements, in conformance with the standards established by the San Antonio Unified Development Code and both of which are hereby expressly made a part of this bond as though the same were written embodied herein.

WHEREAS, under the San Antonio Unified Development Code, it is provided that the Principal, as subdivider, will maintain and keep in good repair, the work herein contracted to be done and performed, for a period of one (1) year from the date of the acceptance of said work, and to do all necessary repairing and/or reconstructing in whole or in part of said improvements that should be occasioned by settlement of foundation, defective workmanship or materials furnished in the construction or any part thereof or any of the accessories thereto constructed by the subdivider. It is understood that the purpose of this section is to cover all defective conditions arising by reason of defective material, labor or workmanship, and charge the same against the Principal, as subdivider, and Surety on this obligation and that both Principal and Surety shall be subject to liquidation damages for each day's failure to correct any defective conditions. Now, therefore, if the Principal shall keep and perform by maintaining said work and keep the same in repair for the maintenance period of one (1) year, as provided, then this bond shall be null and void and have no further effect, but if default shall be made by the Principal in the performance of its duty to so maintain and repair said work, then this bond shall have full force and effect, and the City of San Antonio shall have and recover from the Principal and Surety damages resulting from such condition; and it is further agreed that this obligation shall be a continuing one against the Principal and Surety and that successive recoveries may be made until the full amount shall have been exhausted; and it is further understood that the obligation herein to maintain said work shall continue

throughout said maintenance period, and the same shall not be changed, diminished or in any manner affected from any cause during said time.

Principal and Surety both acknowledge that this agreement is entered into in San Antonio, Bexar County, State of Texas. The construction of this agreement and the rights remedies, and obligations arising there under are governed by the laws of the State of Texas. Both Principal and Surety hereby agree that the Texas conflicts of law rules do not control this agreement and will not be used to cause the application of the laws of a jurisdiction other than the State of Texas. The obligations performable by both Principal and Surety are performable in San Antonio, Bexar County, Texas.

Additionally, Surety agrees that the City of San Antonio will satisfy any legal or contractual requirements arising from or in connection with this performance bond by directing such action to the Texas office listed below. Surety shall not waive or amend this office without the prior consent in writing of the City of San Antonio.

IN WITNESS WHEREOF, said Principal has caused this bond to be executed and Surety has caused this bond to be executed by its attorney in fact and said attorney in fact, _____ (*print name*), has hereunto set his or her hand, the _____ day of _____, 20____.

Name of Principal

Name of Surety

By (*print name*)

Title

Address

Phone

By (*print name*)

Title

Address

Phone

The name, address and phone number of the Resident Agent of Surety is: (**must be Texas office**)

***Power of Attorney attached**

NOTE: Date of Maintenance Bond shall not be prior to date of acceptance of the improvements

Draft for Irrevocable Letter of Credit.

DRAFT

SIGHT

DATE: _____

PAY TO THE ORDER OF CITY OF SAN ANTONIO \$ (AMOUNT IN FIGURES)

(AMOUNT IN WORDS) _____ UNITED STATES DOLLARS.

DRAWEE:

(Bank Name)

(Address)

DRAWER:

CITY OF SAN ANTONIO

"DRAWN UNDER IRREVOCABLE STANDBY LETTER OF CREDIT

NO. _____ OF (BANK NAME)".

Authorized Signature

NOTE: THE ORIGINAL OF THE ABOVE DRAFT MUST BE ENDORSED ON THE REVERSE SIDE AS FOLLOWS:

CITY OF SAN ANTONIO

Authorized Signature
